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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information	)	

COMMENTS OF BELL ATLANTIC[1] SUPPORTING MOTIONS TO DEFER CPNI RULES

The Commission should grant the petitions of CTIA and GTE[2] and defer the effective date of certain rules adopted in the CPNI Order,[3] pending reconsideration. In particular, the Commission should defer rule provisions that require prior permission for carriers to use CPNI from telecommunications services to market and sell related customer premises equipment

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

[2] Cellular Telecommunications Industry Association, Request for Deferral and Clarification (filed Apr. 24, 1998) ("CTIA"); GTE Service Corporation and its Affiliated Domestic Telecommunications, Wireless and Long Distance Companies, Petition for Temporary Forbearance or, In the Alternative, Motion for Stay (filed Apr. 29, 1998) ("GTE").

[3] *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 98-27 (rel. Feb. 26, 1998).

("CPE")[4] and information services,[5] and provisions prohibiting use of CPNI to win back customers that have switched to other service providers.[6] These provisions appear in 47 C.F.R. § 64.2005(b)(1) and (3) and are scheduled to become effective on May 26, 1998 unless stayed or deferred.[7]

Congress enacted Section 222 of the 1996 Act "to balance both competitive and consumer privacy interests with respect to CPNI." Conf. Rpt. 104-458 at 205 (Jan. 31, 1996). The provisions of the Commission's CPNI Order in question, however, will not further competition nor protect privacy. Instead, they will simply make it more difficult for consumers to obtain the services and equipment they want and to obtain the best prices for their telecommunications services.

Bell Atlantic will show in its reconsideration petition that the Commission's reading of Section 222(c)(1)(B) of the Act that bars use of CPNI to market or sell CPE (without prior consent) because CPE is "equipment" and not a "service" is overly narrow. The

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[4] The CPE that is subject to the deferral should include, at a minimum, wireless equipment, including, but not limited to, handsets, antennas, adaptors, batteries, wireless data terminals, pagers and other wireless devices; specialized CPE associated with advanced services, such as ADSL, ISDN, frame relay and SMDS; specialized CPE that is needed to use other services such Caller ID, visual message waiting indicator, Identi-A-Ring, and other optional services, CPE used for the sight- or hearing-impaired, and screen phones that provide short alphanumeric messages or instructions.

[5] The information services in question should include not only the voice and fax storage services and Internet access services listed in paragraph 72 of the CPNI Order, in Section 2005(b)(1) of the Rules, and in the petitions, but also protocol conversion services, because they are also integral to the underlying telecommunications services with which they are associated.

[6] The law is clear that the win-back rule does not apply until a customer terminates service and that CPNI does not include customer names and addresses. Therefore, there is no need for the clarification of these provisions that CTIA requests at 41-43.

[7] 63 Fed. Reg. 20326 (Apr. 24, 1998).

Commission has in a number of occasions defined premises equipment as an integral part of telecommunications services, and it should do so here for equipment that is used in, or necessary to a telecommunications service, even if it is provided as CPE. In addition, the Commission allowed use of telecommunications service CPNI to market or sell inside wire, and the Commission has defined inside wire to include items of CPE.

Bell Atlantic will also ask the Commission to reconsider its finding that information services are not "necessary to, or used in" telecommunications services. The reason a customer uses a telecommunications service is to complete a communication to one or more intended recipients. Without some information services, such as voice and fax messaging, Internet access, and protocol conversion, the communication will never reach its intended destination and the communication will not take place.

Bell Atlantic will also show that, under Section 10(a) of the Act, 47 U.S.C. § 160(a), the Commission should, based upon an unbroken chain of public interest findings in earlier proceedings, forbear from applying the CPNI provisions of the sale and marketing of telecommunications services on one hand and CPE and information services on the other.[8] In order to avoid severe disruption to the public that CTIA and GTE show will occur while it considers the reconsideration petitions,[9] the Commission should defer the effective date, or stay, the provisions of Section 64.2005(b)(1) of its Rules, 47 C.F.R. § 64.2005(b)(1), pending reconsideration.

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[8] The CPNI provisions currently in effect under the Computer Inquiry II and III rules have proved more than adequate to protect privacy and competition and should be made less stringent, not tightened further.

[9] CTIA and GTE both indicate that they plan to seek reconsideration, and other parties can be expected to file similar requests as well.

Similarly, it should defer or stay Section 64.2005(b)(3) of the Rules, 47 C.F.R. § 64.2005(b)(3), that prohibits use of CPNI for win-back, as GTE requests (at 27-33).[10] Customers that switch carriers may benefit from a "bidding war" between the new and previous carrier for that customer's business. The previous carrier may offer the customer new packages of services that the customer did not know were available, and the new carrier may counter with its own package. One example of that happening was documented in a recent Wall Street Journal article that relates the experience when several new wireless service providers began to compete with the incumbent cellular carriers in Jacksonville, Florida.[11] There, unlimited service dropped from $395/month to $50/month (for a one-year promotional period). Additionally, in cases where a customer terminates service because of service quality problems of which the previous carrier was unaware, conducting a win-back effort will allow the carrier to learn about those problems and attempt to correct them before they become endemic.

Moreover, if the customer's carrier was changed without his or her consent, i.e., the customer was "slammed," a win-back call from the previous carrier will uncover the slam. Without the ability to contact a lost customer, the customer may not be aware of the slam until the first bill is received. If a win-back call uncovers the slam, the records can be quickly corrected and the customer will be less inconvenienced.

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[10] This relief would allow the losing carrier to use information about the services the customer subscribed to for the purpose of targeting customers and suggesting pricing plans and service options that they may find attractive. The Commission's CPNI order does not prohibit use of a notice of termination to conduct a non-targeted win-back effort.

[11] Elizabeth Jensen, "Yakking It Up: For Wireless Services, Talk Gets Far Cheaper As Competition Rages," Wall Street Journal, Apr. 27, 1998, at A1. A copy of that article is attached.

For all these reasons, the Commission should grant the petitions of GTE and CTIA and defer or stay the May 26, 1998 effective date of new Sections 64.2005(b)(1) and (3) of its Rules, pending reconsideration.

Respectfully submitted,

Lawrence W. Katz
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-4862

Attorney for the Bell Atlantic Telephone Companies

Michael E. Glover
Of Counsel

May 8, 1998

The Wall Street Journal

Monday, April 27, 1998

Yakking It Up: For Wireless Services, Talk Gets Far Cheaper As Competition Rages

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In Jacksonville, Fla., Rivals Are Multiplying Faster Than New Customers

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BellSouth Issues Surfer Duds

By Elizabeth Jensen
Staff Reporter of The Wall Street Journal

JACKSONVILLE, Fla. -- A giant black balloon shaped like a cell phone bobs in the wind in front of the PrimeCo store in an Orange Park strip mall. The gimmick is tacky, but PrimeCo has little choice: About a dozen other outlets within a few blocks are hawking wireless services, too.

Like almost all areas of the U.S., this midsize market of one million people made do with just two cellular companies for more than a decade. But 18 months ago, competition came to town, and now six companies vie for attention, pushing competing technologies, coverage patterns, ever-tinier pocket phones and packages of monthly minutes so large the sellers call them "buckets." A seventh, Sprint Corp., will arrive this summer.

Wireless ads beckon from billboards and in TV spots, radio jingles and full- color newspaper inserts. Service is sold at more than 250 outlets, ranging from Radio Shack stores to kiosks in Winn-Dixies and WalMarts. The pro-football stadium is emblazoned with the name of one wireless upstart. Art exhibits and charity golf tournaments have wireless sponsors, and BellSouth Corp. recently took over the annual Kingfish tournament, with $500,000 in angling prizes, from Nissan Motor Co. The marketing frenzy has benefited consumers and pained the combatants. Prices have plunged an average of 46%, by one industry estimate, features are snazzier and long-term contracts, with their hundreds of dollars in penalties for early cancellation, are disappearing fast. The newcomers have cut prices more than even they had anticipated, offering cheap, unlimited-usage packages once unknown and forcing sharp rate reductions by the two incumbents, BellSouth, the local phone provider, and AT&T Corp. BellSouth's market share has tumbled 10 percentage points to 52%, and AT&T's is down six points to 32%, estimates Richard Prentiss, a former BellSouth staffer and now a securities analyst for Raymond James & Associates.

But a major question remains: How can anyone earn much in such a game? Even the combatants are predicting casualties.

"I wouldn't expect everyone to still be around in five years," says Scott Ford, president of Alltel Corp., which entered the fray here in February. "You'll see merger mania," predicts Frank Bell, a Sprint vice president who is overseeing its summer launch here. "Because of the cost of playing in this game, you need to be prepared to be in it for the long haul." The battle of Jacksonville is an early version of what many cities can expect. The cellular business started in the 1980s as a system of federally sanctioned duopolies in each market. For years, rates stayed high and pricing and feature packages varied little. But in 1995, the government ushered in new wireless technology known as "personal communications services." It auctioned off vast swaths of airwaves and cracked open local markets so that as many as 10 players eventually could compete in each one.

The new players quickly began building PCS networks, and now cities long accustomed to the cozy cellular duopoly are watching it shatter. Phoenix, Philadelphia, Denver, Miami and Boston have six rival service providers apiece. Of the top 25 U.S. markets, all but two now have five wireless franchises. The question is whether the newcomers can expand the market and attract enough first-time customers for everyone to survive -- or whether the industry will sink into a war of attrition, with rivals raiding clients from one another and eventually consolidating.

So far, the scene here isn't reassuring. Jacksonville hardly seems the ideal place for a wireless free-for-all. Its economy employs about 500,000 people, and approximately 240,000 already get wireless service, up 60,000 in less than two years-a gain of about a third. But the number of competitors has tripled. By most estimates, moreover, at least half of the new PCS companies' subscribers are switchers from other carriers rather than new users helping expand the market. For years, cellular companies had held down customer turnover to about 20% a year by imposing financial penalties for canceling a one- or two-year contract. That gave them some time to recoup the upfront costs of landing new customers, such as the subsidies required to "sell" $400 cell phones for almost nothing. With the locked-in contracts now fading, some wireless executives fret that their business could come to resemble the fickle long-distance field, with customers switching carriers at the whiff of a better offer.

None of the companies here is disclosing its "churn" rate, but that spikes every time another rival opens shop, and it could go even higher as contracts expire and the newcomers put in more cell sites.

The high turnover makes it all the harder to post a profit. The newcomers have spent a total of several hundred million dollars to build local networks in this area. Powertel Inc., the first new arrival when it began offering service in the fall of 1996, has invested about $65 million. The fourth entrant, the PrimeCo joint venture of Bell Atlantic Corp. and AirTouch Communications Inc., is estimated to have spent $110 million, while the fifth and sixth entrants -- wireless-dispatcher Nextel Communications Inc. and Alltel, of Little Rock, Ark. -- are estimated to have spent less than $50 million each. Sprint estimates that it will spend $360 million for licenses, cell sites and marketing in Jacksonville and nearby Tampa, Orlando and Tallahassee.

Despite such outlays, prices went into a free fall shortly after competition hit. When Powertel turned on its network on Oct. 29 and PrimeCo on Nov. 13, it initially seemed as if it would be a very polite party. The new services unveiled prices just slightly lower than the incumbents' and ran only a few teaser ads pushing features such as no long-term contracts. That changed on the morning of Nov. 24. In an ad in the Florida Times-Union, Powertel offered unlimited calls for $50 a month for one year -- at a time when BellSouth was charging $395 a month for its all-you-can-eat plan. "We were shocked," concedes Jim Bugel, BellSouth Mobility's Jacksonville general manager.

The low price, which the company offered in all its markets to jump-start a slow launch, drew new customers such as Melinda Morgan. The 30-year-old real- estate agent had abandoned her cell phone several years earlier for a pager. She wasn't willing to pay hundreds of dollars a month for a cell phone, but "for $50 a month, you can't beat it," she says. She wasn't a bargain for Powertel, however: She gobbled up 1,500 minutes of talk time a month and once hit 3,000. Now that the offer has expired, she is paying $90 a month for a 1,500-minute-bucket plus a dime for every additional minute.

BellSouth didn't immediately counter with lower prices. Nor did AT&T or PrimeCo. They were betting that Powertel would be swamped by huge demand, and they were partly right. It took Powertel several months to get service and billing straightened out. The offer "was a lot more well-received than anticipated," says Walt Pettiss, the general manager of Powertel's Jacksonville system.

It soon became clear, however, that at $50 a month for unlimited chatting, many customers willingly put up with the problems. Forty-five days after Powertel's move, BellSouth bit the bullet and called up its unlimited-plan customers, as well as people who had defected to Powertel, and offered to halve their monthly costs, to just under $200. Even though that was still $150 a month more than Powertel's price, 30% to 40% of the defectors came back within six months, BellSouth says. Mr. Pettiss says Powertel didn't see any big change in its number of customers or new sign-ups. PrimeCo reacted, too, but with nothing nearly as attractive: $45 for 400 minutes. And AT&T held firm, through October. "If price is customers' only consideration, they may not buy from us," says Ron McKenzie, AT&T's Jacksonville general manager, contending that people will pay extra for the AT&T brand and truly nationwide coverage. "Some of the other characters would love to have that blue globe," he says, referring to AT&T's logo.

By contrast, BellSouth, which had the most to lose, turned up the heat. "Did we have to go to drastic measures? Sure," Mr. Bugel says. Even before competition arrived, the Bell had initiated pre-emptive defenses, stoking the work force and offering major customers slightly better rates and new features such as voice mail, a freebie that helped boost usage. Mindful of its market dominance, BellSouth issued "Big Dog" surfer duds to staffers and staged a weeklong pep rally dubbed "The Battle of Jacksonville."

Employees learned the history of the Telecommunications Act of 1996 and, through role-playing skits, how to handle confused customers. BellSouth also nearly doubled its customer-support staff and enlisted rank-and-filers for intelligence gathering; today, they peek between the brown paper on the windows when competitors open new stores, and then they distribute their findings in urgent e-mails. BellSouth also opened more of its own stores, signed up more independent dealers and put kiosks in grocery stores. It now has about 100 outlets, well ahead of its rivals.

BellSouth also tripled the size of its "save group," a SWAT team that jumps on defectors. When the team heard that a major builder was about to leave for Powertel, BellSouth bought 20 Powertel phones and delivered them to the client even as the Powertel sales rep was waiting in the lobby. The client tried the Powertel phones for 48 hours and then stayed with BellSouth, finding that the Powertel phones didn't work in as many places, says Denise Ramey, BellSouth's director of sales. Powertel says it can't confirm or deny the incident. By last May, all the hype was so confusing customers that BellSouth took out a 14-page advertising supplement in the Sunday paper. But the frenzy didn't let up. Nextel, with an unusual walkietalkie feature that appeals to groups such as construction crews, launched its service last June and immediately began challenging PrimeCo for the lucrative small-business market. That coincided with another bucket from PrimeCo: 600 minutes a month until the year 2000, for just $54.99 a month.

Then came Alltel. Although its mortgage-processing subsidiary had been based in Jacksonville for years, the company had little brand recognition when it began offering phone services here on Feb. 23. So it spent $6.2 million to slap its name for 10 years on the recently built National Football League stadium that is home to the new Jacksonville Jaguars -- a deal that BellSouth says it turned down.

Everyone has grabbed for a piece of the Jaguars. Alltel has also cut deals with several players, but Sprint notes that those players can appear only in street clothes because Sprint has the national NFL tie-in rights, giving it half-time field promotions and player appearances in uniform. BellSouth provides phones to the team, although Alltel will soon take over that role. Powertel has to be content with pregame tailgate parties for consumers in the Alltel stadium parking lot. PrimeCo works closely with the charitable foundations of two local Jaguar players.

Alltel came to town touting the convenience of getting wireless, paging, longdistance and Internet service from a single company on a single bill. Its ads promised nickel-a-minute cellular rates and sleek $49 phones. But Powertel blunted Alltel's pitch by unveiling attractive flat-rate long-distance fees, such as $15 a month for unlimited long-distance calling in its 12-state region. BellSouth saved its countermove for March, with a "1-bill" campaign promising to combine wireless, local phone and Internet-access charges. Eventually, Alltel also hopes to add to its bundle by offering local phone service in Jacksonville. BellSouth is getting into cable TV this fall. Whether tactics such as bill bundling and community involvement actually work is questionable. Price remains crucial to many consumers, who, with all the hype, are now much savvier about wireless. Five years ago, a lot of people weren't sure they needed a wireless phone at all, but now they grill the providers on the superiority of a particular system, Mr. Bugel says.

Excluding promotions such as Alltel's rate of five cents a minute, Powertel has by far the lowest-cost minutes, according to an analysis by Yankee Group Inc., while AT&T, under most of its rate plans, has the highest. On 100-minute- a-month plans, for example, the Boston consulting group estimates that AT&T charges 40 cents a minute, compared with Powertel's 20 cents.

Several years ago, when the Federal Communications Commission began the licensing process for PCS, which offers feature-rich technology such as Caller I.D., Call Waiting and voice mail, AT&T was already upgrading its old analog systems to digital to provide similar features. But then, AT&T seemed to drop the ball, and only recently has it appeared to take the battle more seriously.

In February, it slashed prices in the Southeast, including Jacksonville, offering an aggressive bucket plan of 1,000 minutes for $99.99. It also sharply increased the commission it pays dealers for new customers. It denies the suggestions of some analysts that it has missed financial targets for the region and says it made the changes because "we wanted to get competitive," says Emilio Echave, AT&T Wireless's East Area president. Since competition arrived, he notes, AT&T has increased its own stores in Jacksonville to five from one and its spending on advertising, promotion and marketing here by 20% to 30%. The company disputes the market-share estimates of Mr. Prentiss, the analyst, but it won't provide its own figure.

AT&T's smaller rivals have cut into its business despite inferior network coverage, Mr. Echave says, "by being very loud on other stuff. Now that all the euphoria is over, let's get down to value." At the prices his rivals charge, their long-term viability is questionable, he says. "If I was on the other side, I would definitely be looking at the economics of my decision."

He figures the players can survive "if you can make money at 10%" of the market, but even that assessment seems overly sanguine. Even if a 10% share of the market could guarantee profits, no newcomer seems likely to hit that mark anytime soon. Incumbents BellSouth and AT&T still control more than 80% of the market. Of the new players, Powertel has grabbed the most new business, just 6%, with PrimeCo at 5%, Nextel at 2% and Alltel too new to make a dent as yet, Mr. Prentiss estimates.

To hear the players tell it, though, everything will be just fine. Both BellSouth and AT&T say they have many more customers now than in precompetition days because the whole pie is bigger. As for the newcomers, "Our whole business plan was built around intense competition," says Michael Bennett, PrimeCo's director of sales and marketing. "We planned around worst-case scenarios," such as Alltel's heavily subsidized $49 handset and nickel-a-minute rates, he says. "Some we react to, and some we don't."

Nevertheless, the competitors in Jacksonville are gearing up for another round when Sprint starts up this summer. The ripples are being felt already. Because Sprint has a national marketing pact with Tandy Corp.'s Radio Shack, Sprint says PrimeCo will have to drop its own alliance with the retailer in Jacksonville; PrimeCo says it expects to stay with the chain. Sprint's long- distance customers will soon be getting bill stuffers, and its prices will be in line with its charges nationwide, although an aggressive short-term promotion is likely at launch.

"It'd be a shame not to tell people that we're here," Sprint's Mr. Bell says.

---- INDEX REFERENCES ----

COMPANY (TICKER): Alltel Corp.; AirTouch Communications Inc.; Bell Atlantic Corp.; BellSouth Corp.; Sprint Corp.; Nextel Communications Inc.; Powertel Inc.; AT&T Corp.; Tandy Corp. (AT ATI BEL BLS FON NXTL PTEL T TAN)

NEWS SUBJECT: Newspapers' Section Fronts; High-Yield Issuers; Marketing; Front-Page Stories; World Equity Index; Wall Street Journal (FRT HIY MRK PAG WEI WSJ)

MARKET SECTOR: Consumer Cyclical; Utilities (CYC UTI)

INDUSTRY: Mobile Communication Systems; Long Distance Telephone Providers; Limited Product Specialty Retailers; Regional Telephone Systems; All Specialty Retailers; Telecommunications, All; Telephone Systems (CTS LDS OTS RTL RTS TEL TLS)

PRODUCT: Retailing; Telecommunications (DRE DTE)

REGION: Alabama; Arkansas; California; Florida; Georgia; Kansas; New Jersey; North America; New York; Pennsylvania; Pacific Rim; Texas; United States; Central U.S.; Eastern U.S.; Southern U.S.; Western U.S. (AL AR CA FL GA KS NJ NME NY PA PRM TX US USC USE USS USW)

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<u>CERTIFICATE OF SERVICE</u>

I hereby certify that on this 8[th] day of May, 1998 a copy of the foregoing "Comments of Bell Atlantic Supporting Motions to Defer CPNI Rules" was sent by first class mail, postage prepaid, to the parties on the attached list.

Tracey M. DeVaux

Tracey M. DeVaux

* Via hand delivery.

Janice Myles*
Federal Communications Commission
Common Carrier Bureau
1919 M Street, NW
Room 544
Washington, DC 20554

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554

Michael Altschul
Randall Coleman
CTIA
1250 Connecticut Avenue, NW
Suite 200
Washington, DC 20036

John Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
Irving, TX 75038

Gail Polivy
GTE Service Corporation
1850 M Street, NW
Washington, DC 20036

R. Michael Senkowski
Michael Yourshaw
Gregory Vogt
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006-2304

Counsel for GTE